

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 2, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Pete Ekegren (R)

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: House Bill 381, 2/20/2001
Executive Action: None

HEARING ON HOUSE BILL 381

Sponsor: REPRESENTATIVE MARK NOENNIG, HD 9, Billings

Proponents: Dolores Cooney, Department of Revenue

Opponents: REPRESENTATIVE CAROL JUNEAU, HD 85, Browning

Opening Statement by Sponsor: REPRESENTATIVE NOENNIG presented the bill. He said this was at the request of the Department of

Revenue to address a problem regarding notice of assessments and subsequent tax deed procedures necessary for undivided interests of land. He described the process when taxes are delinquent and there is a notice of assessment, tax sale and tax sale certificate issued. The tax deed is certified by the county and the property owner has 36 months for redemption after the sale. Notice is given to every interested party sixty days prior to the tax deed sale and then title is transferred to the person who has paid the taxes, either the county or some third party. The problem arose when the Department of Revenue's concern about multiple owners of one parcel. Mailing notices to multiple owners can be difficult as they really don't have the resources to find out how many undivided interests there are and their names, then mail each one an assessment notice for the undivided interest or for the entire parcel. It is being done inconsistently with some people getting notices separately and some not. The purpose of the bill would establish a procedure for identifying someone for whom the notice of assessment must be mailed. The Department will send a notice to a single owner of the land and the owners are to provide the Department with the name and addresses of the owners for whom the notices shall be sent. If one isn't provided, they will send one where it was previously sent. New deeds that list owners would have the first one on the deed sent the notice. It was amended in the House because there was concern about the procedure during the redemption period, as far as acquisition of the deed - every owner has to be notified. It is at that time a title search needs to be done to identify every owner and their address. This must be done in order to satisfy the due process requirements. They must all be mailed notices before the tax sale procedure takes place. There is a provision on page 2, lines 1-5, which requires the county treasurers be advised that there are multiple owners. The second part of the bill is found on page 4, lines 9-21. The example of divided ownership of a condominium, is there is one tax ID number for one parcel. In the middle of the year there is an actual recording of the condominium document so each subsequent owner will have an undivided interest in each of the parcels. What often happens is some of these units are sold where there is a new tax ID number. The problem arises when one unit becomes delinquent and a foreclosure is occurring. The only way the treasurer will accept the taxes are with the taxes for the whole parcel. The county can't accept undivided interest. After paying the whole parcel's taxes, there is no way to collect from the one delinquent taxpayer. The only way to collect would be to claim some kind of lien to proceed against all the other owners. He asked this be put in statute, that under those circumstances somebody who owns a portion and pays the taxes for all the property, has a lien against the rest of the owners for repayment of the amount of the taxes that were paid.

Proponents' Testimony: Dolores Cooney, representing the Department of Revenue, spoke in favor of the bill. She said the bill was requested as a result of a Supreme Court decision. The bill would provide for a single assessment notification when there are multiple undivided interests. She referenced mining claims where one owner could have 50% and another person had 50% interest - their interests were in the property as a whole. There is no 50% on the ground. The bill allows assessment by the Department of Revenue of a single owner with the other owners listed in an "and others" or "et al" category. It allows the Department to appraise the property as a whole and then it is dispersed among the owners. The treasurer cannot bill the individual parcels, as it is a single parcel. The joint tenants of the property have rights over the whole property. She explained this is what happened in the Needler Case in 1998. This involved a tax sale on 50% interest in a mining claim and had issues involving notification. A part of the Supreme Court decision addressed the assessment of the property. In the discussion of the assessment of the property, the Supreme Court said that the District Court had failed to address whether or not the county, meaning the Department of Revenue, separate assessment of each undivided interest in this parcel was proper in the first instance. They don't believe it was proper. Not only is there no expressed statutory authorization for the manner in which the Department had appraised and assessed the property, but that form of assessment infringes on the rights normally afforded to tenants, such as tenants in common. Once the decision came out, in order to abide by it, would have to change appraisal practices in Jefferson County. Jefferson County was erroneously assessing two different interests in this single property as two different assessments. This bill was brought forward to rectify that problem. She distributed examples of undivided interests that demonstrates how extensive the problem can get if they cannot assess the parcel as a whole.

EXHIBIT (tas48a01) She explained the records were from the archive in the Anaconda Company and it shows over a period of time how the undivided interests can be more and more complex. The second page is another example of a mining claim. The third page is a file from Glacier County. There are two different types of property in Glacier County. They have patented property going to specific owners. That interest in that patent is not the type of property that this bill addresses. The patent number is expressly tied to that particular owner and to a piece on the ground. There is property under a single patent, that has multiple undivided interests. She explained that with the example, Frank Prairie Chicken, et al, had the et al owners listed in the middle of the page. There has been a concern expressed about the tribal property, but this is a different type which is an undivided interest under a single patent. She explained an undivided interest is a partial interest in those

rights. However, it involves the total rights. In order to take undivided interests and attempt to assess them separately, you need to think about appraising them separately, which begins to go against the rules of appraisal and fee simple title. House bill 381 has three basic parts: 1. The ability to assess a single parcel with multiple interests; 2. If there are owners who want part of that interest and they wish to receive a copy of that assessment, the Department will provide a copy of the whole assessment to them; 3. will provide for a lien in the event of a tax assignment. **{Tape : 1; Side : A; Approx. Time Counter : 7.7 - 16.3}**

Opponents' Testimony: REPRESENTATIVE CAROL JUNEAU, HD 85, Browning, representing the Blackfeet Tribe and Glacier County, spoke against the bill. She distributed a letter in opposition from **Mark Magee**, Director of the Land Department of the Blackfeet Nation. **EXHIBIT(tas48a02)** **Mr. Magee** pointed out the assumption that there are owners that are related. He said that one cannot appeal the classification and appraisal notice if it is not received. It should not be the burden of notification on the single landowner. Since the undivided interests vary in size, how would a single landowner establish an appraised value for each interest? **REP. JUNEAU** requested further review and clarification before proceeding with the bill. **{Tape : 1; Side : A; Approx. Time Counter : 15.9 - 23}**

Questions from Committee Members and Responses: SENATOR ELLIS asked about the BIA owning partial trust lands. **REP. JUNEAU** said yes, if you had a piece of property through the inheritance process, some may be in trust status where an individual is on the deed along with the government. Some could be in a persons name through fee status, through the process of inheritance and probate and other ways. She noted there were a lot of complexities of ownership, especially on Reservations. One of the many concerns was the need to communicate with the Department of Revenue so that the enormous loss of lands, because of tax deeds and other issues, would not continue to occur. **{Tape : 1; Side : A; Approx. Time Counter : 23 - 25.9}**

SENATOR ELLIS asked how these parcels were handled now. **Ms. Cooney** replied that Trust Lands were not taxed in Montana. Fee land is clearly taxed. She said she would clarify whether lands could be mixed Trust and fee. The need for consistency in dealing with multiple land owners is important. **REP. MCKENNEY** said he was troubled thinking there could be an undivided ownership between the Trust lands and the fee lands. If this is true, the problems go beyond the notices in this bill. When you get to the tax deed, that is where there will be a problem. You would have to figure out a way to have a deed action on the part

that is delinquent in taxes. If you have the delinquency - first of all the Supreme Court has said there was no legal authority for separately assessing property that is undivided. How would the Department of Revenue determine the value of an undivided interest? It is the ownership of the parcel that has the value. There is no mechanism for determining what an undivided interest share of the value is. **{Tape : 1; Side : A; Approx. Time Counter : 25.9 - 30}**

SENATOR ELLINGSON asked how land would be held by unrelated parties. **REP. JUNEAU** replied in terms of the undivided interests of land on the Reservations, when lands were allotted through the allotment act, people were given 160 acres. Over the years, when they passed away, it was divided out among their children through probate, marriage to a non-Indian or someone from another state. The land has subdivided over and over and now there is more fractional ownership. There are lots of issues and complications in title land. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.1}**

SENATOR COLE clarified there were two types of Trust lands, some Tribal land and some owned by individuals. The problem is with the individuals. The Blackfeet had thirty thousand acres of fee land within the Reservation. He noted problems with the bill when it deals with allotments that are split up as far as 1/3600ths and some of the allotments were ten acres, some 160 acres. Some of the assessments were one and two cents a year and could not even be mailed until they reached a dollar. There may be 500 owners on forty acres. He suggested looking at the individual fee patent lands. Also, they are not taxed when they are on the Reservation as there has been some agreements made between some of the Tribes and the state of Montana. There may be a way of exempting some of these out. **REP. NOENNIG** said that trust lands were not involved but fee lands that had so many owners would be difficult to assess. Those already receiving notices that have fractional interests, can request to continue receiving notification. The question of who pays what if they don't know each other is difficult to determine. It is not be complied with now and the Department needs a solution. **{Tape : 1; Side : B; Approx. Time Counter : 7.1 - 11}**

SENATOR STONINGTON asked about the variations of how the Department deals with the problem. **Ms. Cooney** replied the correct way to do it is to assess the parcel, mail to a single owner and carry the other owners as an et al file. This is what happened when the Supreme Court dealt with the issue. However, the Department felt in order to reinforce the correct way to do it, clear statutory language was necessary. **{Tape : 1; Side : B; Approx. Time Counter : 9.5 - 12.5}**

Closing by Sponsor: REP. NOENNIG closed. He pointed out the problem of an undivided 1/500th interest goes delinquent in taxes and there is a foreclosure and tax deed. What does the new owner do with that? CHAIRMAN DEPRATU asked SENATOR COLE to work with the sponsor, the Department of Revenue and all the Tribes on ideas and to address concerns they may have. {Tape : 1; Side : B; Approx. Time Counter : 24 - 27.5}

ADJOURNMENT

Adjournment: 8:56 A.M.

SEN. BOB DEPRATU, Chairman

DEB THOMPSON, Secretary

BD/DT

EXHIBIT (tas48aad)